

University of California, Hastings College of the Law UC Hastings Scholarship Repository

Propositions

California Ballot Propositions and Initiatives

1988

Acquired Immune Deficiency Syndrome -- AIDS.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

Acquired Immune Deficiency Syndrome -- AIDS. California Proposition 69 (1988).
http://repository.uchastings.edu/ca_ballot_props/1012

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Official Title and Summary Prepared by the Attorney General

ACQUIRED IMMUNE DEFICIENCY SYNDROME — AIDS. INITIATIVE STATUTE. Declares that AIDS is an infectious, contagious and communicable disease and that the condition of being a carrier of the HTLV-III virus or other AIDS-causing viral agent is an infectious, contagious and communicable condition. Requires each be placed on the list of reportable diseases and conditions maintained by the Department of Health Services. Provides each is subject to quarantine and isolation statutes and regulations. Provides that Health Services Department personnel and all health officers shall fulfill the duties and obligations set forth in specified statutory provisions to preserve the public health from AIDS. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: The net fiscal impact of this measure is unknown—and could vary greatly, depending on what actions are taken by health officers and the courts to implement it. If current practices used for the control of AIDS are continued, there would be no substantial change in direct costs. If the measure were interpreted to require changes in AIDS control measures by state local health officers, depending upon the level of activity, the cost of implementing it could range from millions to hundreds of millions of dollars.

Analysis by the Legislative Analyst

Background

Acquired immune deficiency syndrome (AIDS) is a disease that impairs the body's normal ability to resist harmful diseases and infections. The disease is caused by a virus—the human immunodeficiency virus (HIV)—that is spread through intimate sexual contact or exposure to the blood of an infected person. As of the preparation of this analysis, there is no readily available method to detect whether a person actually *has* the AIDS virus. A test does exist to detect whether a person has ever been *infected* with the AIDS virus and, as a result, has developed antibodies to it. A person infected with the AIDS virus may or may not develop the AIDS disease after a period of years. There is no known cure for AIDS, which is ultimately fatal.

AIDS became a recognized disease in 1981. Since then almost 12,000 persons in California have been diagnosed as having this disease, and about 7,000 of them have died. The State Department of Health Services estimates that possibly 500,000 persons in California are currently infected with the AIDS virus. The department estimates that by 1991 a total of approximately 50,000 AIDS cases will have been identified in the 10 years since AIDS became a recognized disease.

Existing Laws Covering Communicable Diseases. Local health officers have broad authority to take actions they believe are necessary to protect public health and prevent the spread of disease-causing organisms. However, this broad authority is limited to situations where there is a reasonable belief that the individual affected has or may have the disease and poses a danger to the public. The kind of action taken by health officers varies, depending on how easily an organism is spread from one person to another. For example, to prevent the spread of a disease, local health officers may require isolation of infected or diseased persons, and quarantine of exposed persons. In addition, persons infected with a disease-causing organism may be excluded from schools for the duration of the infection and excluded from food han-

dling jobs. In some cases, these actions may be taken with respect to persons suspected of having the infection or the disease.

Current AIDS Reporting Requirements. Physicians and other health care providers are now required to report the names of persons who have certain listed communicable diseases to local health officers who, in turn, report the cases to the State Department of Health Services. As of the preparation of this analysis, AIDS is not on the list of communicable diseases that must be reported to local health officers. However, AIDS is being reported under a regulation that requires an unusual disease, not listed as a communicable disease, to be reported by local health officers. Under other provisions of law, hospitals are required to report the names of persons who have AIDS to local health officers who, in turn, report the cases to the State Department of Health Services.

With limited exceptions, existing law does not allow the release of the names or other identifying information for persons who take a blood test to determine the presence of antibodies to the AIDS virus. This test indicates that a person has been infected with the virus. Counties must report to the state the number of cases in which blood tests performed at certain facilities reveal that a person has been infected with the virus.

According to the State Department of Health Services, persons who have AIDS and persons who are capable of spreading the AIDS virus are subject to existing communicable disease laws. However, no health officer has ever taken any official action to require persons infected with the AIDS virus to be isolated or quarantined, because there is no medical evidence which demonstrates that the AIDS virus is transmitted by casual contact with an infected person. In addition, no health officer has recommended excluding persons with AIDS, or those who are capable of spreading AIDS, from schools or jobs.

Proposal

This measure declares that AIDS and the "condition of being a carrier" of any virus that causes AIDS are

communicable diseases. The measure also requires the State Department of Health Services to add these conditions to the list of diseases that must be reported. The effect of these provisions would be to require that the names of those who are "carriers of the AIDS virus," in addition to those who have the disease, be reported. No test to determine whether a person is a "carrier of the AIDS virus" is readily available. It is likely, however, that the HIV antibody test would be interpreted as a test for the AIDS virus for purposes of the measure, because medical professionals use the test in this manner.

If the measure is interpreted to require reporting the names of individuals who test positive for the HIV antibody, the measure would affect existing laws related to testing. First, the measure would require certain state-funded testing programs to obtain the names of persons receiving the tests in order to facilitate reporting to local health officers as mandated by the measure. Currently, these tests are provided on an anonymous basis. Second, the measure would require release of these names to local health officers if the test shows that the person has the HIV antibody.

The measure also states that the Department of Health Services and all health officers "shall fulfill all of the duties and obligations specified" under the applicable laws "in a manner consistent with the intent of this act." Although the meaning of this language could be subject to two different interpretations, it most likely means that the laws and regulations which currently apply to other communicable diseases shall also apply to AIDS and the condition of being a carrier" of the AIDS virus. Thus, health officers would continue to exercise their discretion in taking actions necessary to control this disease. Based on existing medical knowledge and health department practices, few, if any, AIDS patients and carriers of the AIDS virus would be placed in isolation or under quar-

antine. Similarly, few, if any, persons would be excluded from schools or food handling jobs. If, however, the language is interpreted as placing new requirements on health officers, it could result in new actions such as expanding testing programs for the AIDS virus, imposing isolation or quarantine of persons who have the disease, and excluding persons infected with the AIDS virus from schools and food handling positions.

Fiscal Effect

The fiscal effect of this measure could vary greatly, depending on how it would be interpreted by state and local health officers and the courts. If current practices used for the control of AIDS are continued, there would be no substantial net change in state and local costs as a direct result of this measure. Under this circumstance, if the AIDS antibody test is interpreted as demonstrating that a person is a carrier of AIDS, the primary effect of this measure would be to require the reporting of persons who are carriers of the virus that causes AIDS.

The fiscal impact could be very substantial, however, if the measure were interpreted to require changes in AIDS control measures by state and local health officers, either voluntarily or as a result of a change in medical knowledge on how the disease is spread, or as a result of court decisions that mandate certain control measures. Ultimately, the fiscal impact would depend on the level of activity that state and local health officers might undertake with respect to (1) identifying, isolating, and quarantining persons infected with the virus, or having the disease, and (2) excluding those persons from schools or food handling positions. The cost of implementing these actions could range from millions of dollars to hundreds of millions of dollars per year.

In summary, the net fiscal impact of this measure is unknown—and could vary greatly, depending on what actions are taken by health officers and the courts to implement this measure.

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure proposes to add new provisions to the law; therefore, the new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. *The purpose of this act is to:*

(a) *Enforce and confirm the declaration of the California Legislature set forth in Health and Safety Code Section 195 that acquired immune deficiency syndrome (AIDS) is serious and life threatening to men and women from all segments of society, that AIDS is usually lethal and that it is caused by an infectious agent with a high concentration of cases in California;*

(b) *Protect victims of acquired immune deficiency syndrome (AIDS), members of their families and local communities, and the public health at large; and*

(c) *Utilize the existing structure of the State Department of Health Services and local health officers and the statutes and regulations under which they serve to preserve the public health from acquired immune deficiency syndrome (AIDS).*

SECTION 2. Acquired immune deficiency syndrome (AIDS) is an infectious, contagious and communicable disease and the condition of being a carrier of the HTLV-III virus or any other viral agent which may cause acquired immune deficiency syndrome (AIDS) is an infectious, contagious and communicable condition and both shall be placed and maintained by the director of the Department of Health Services on the list of reportable diseases and conditions mandated by Health and Safety Code Section 3123, and both shall be included within the provisions of Division 4. of such code and the rules and regulations set forth in Administrative Code Title 17, Part 1, Chapter 4, Subchapter 1, and all personnel of the Department of Health Services and all health officers shall fulfill all of the duties and obligations specified in each and all of the sections of said statutory division and administrative code subchapter in a manner consistent with the intent of this Act, as shall all other persons identified in said provisions.

SECTION 3. In the event that any section, subsection or portion thereof of this Act is deemed unconstitutional by a proper court of law, then that section, subsection or portion thereof shall be stricken from the Act and all other sections, subsections and portions thereof shall remain in force, alterable only by the people, according to process.

Argument in Favor of Proposition 69

Proposition 69 extends existing public health codes for communicable diseases to AIDS and AIDS virus carriers. This means that the same public health codes that already protect you and your family from other dangerous diseases will protect you from AIDS. Proposition 69 will keep AIDS out of our schools, out of commercial food establishments, and give health officials the power to test and quarantine where needed. These measures are not new; they are the same health measures applied, *by law*, every day, to every other contagious disease.

Today AIDS is out of control. Present "policy" is a disaster. There were about 500,000 AIDS carriers in California in 1985, according to health authorities. At that time the number of cases of this highly contagious disease was doubling approximately every 6-12 months. Even assuming that the doubling rate had slowed to every 24 months, this would mean an estimated 1 million Californians infected with the AIDS virus today. Many of these newly infected persons can thank those who fought against Proposition 64 for their tragic condition.

The number of "unexplained" AIDS cases—cases not in "high-risk" groups, such as homosexuals and intravenous drug users—continues to grow at alarming rates. Indeed, the majority of cases worldwide fall into no identifiable "risk group" whatsoever. The AIDS virus has been found living in many bodily fluids, including blood, saliva, respiratory fluids, sweat, and tears, and it can survive upwards of seven days outside the body. There presently exists no cure for the sick, and no vaccination for the healthy. It is 100% lethal.

AIDS is the gravest public health threat our nation has ever faced. Traditional California public health law

clearly states that certain proven public health measures *must* be taken to protect the public from *any* communicable disease, and no competent medical professional denies AIDS is "communicable." Nevertheless, politicians and special interest groups have circumvented the public health laws. California's current "AIDS testing confidentiality" statute even prohibits doctors from disclosing AIDS infection status to health authorities, endangering medical and law enforcement personnel, and the general public. For the first time in our history, a deadly disease is being treated as a "civil rights" issue, rather than as a public health issue.

Under present policy, since health officials generally do not know who is infected, there is little they can do either to prevent the infected person from infecting others, or to get that person proper medical attention before they develop full AIDS. Many who spoke against Proposition 64 now call for testing and contact tracing. Had it passed, these measures would already be in effect. How many more Californians must become sick and die before we act to stop this epidemic?

The medical facts are clear. The law is clear. Common sense agrees. You and your family have the right to protection from *all* contagious diseases, including AIDS—the deadliest of them all. If you agree, vote YES on Proposition 69.

KHUSHRO GHANDHI

California Director, National Democratic Policy Committee (NDPC), and Member, Los Angeles County Democratic Party Central Committee

JOHN GRAUERHOLZ, M.D., F.C.A.P.

(Fellow, College of American Pathologists)

LYNDON H. LAROCHE, JR.

Candidate for the 1988 Democratic Party Presidential Nomination

Rebuttal to Argument in Favor of Proposition 69

They're at it again, spreading the same misinformation and falsehoods that were rejected overwhelmingly by California voters in 1986.

We urge you to vote NO on Proposition 69.

Don't be misled by the proponents' "facts." Medical evidence proves that AIDS is not "highly contagious" like other diseases. No one has contracted AIDS through the air, through food or other casual contact. There is no "alarming" increase in "unexplained" AIDS cases. The proponents' "1 million AIDS cases" is a total fiction.

Make no mistake about it. AIDS is a serious public health crisis, requiring vast increases in governmental funding and action. But the last thing we need is an irrational measure like Proposition 69 which could cost billions of dollars to enforce and only make the epidemic worse.

Proposition 69 threatens the health of all Californians. It would cripple medical researchers seeking a cure and

vaccine for AIDS. It could also result in the testing, unemployment and quarantine of millions of Californians—including many who are perfectly healthy.

We can't allow public health policy to be dictated by political extremists with no medical training. Let's stop this madness once and for all.

Proposition 69 won't prevent a single case of AIDS. It is designed merely to instill panic to advance the political career of a man who is under indictment on federal criminal charges.

Don't let the proponents play games with our lives. Vote NO on Proposition 69.

LAURENS WHITE, M.D.

President, California Medical Association

MARILYN RODGERS

President, California Nurses Association

C. DUANE DAUNER

President, California Association of Hospitals and Health Systems

Acquired Immune Deficiency Syndrome—AIDS. Initiative Statute

69

Argument Against Proposition 69

Proposition 69 is virtually identical to a measure which was defeated by California voters in 1986 by the overwhelming margin of 72% to 28%.

Proposition 69 must be defeated again for the safety and public health of all Californians. It is an irrational, inappropriate and misguided approach to a serious public health problem. The proponents of this measure want to create an atmosphere of fear, misunderstanding, inadequate health care and panic. In fact, the name of their campaign committee is PANIC.

Public health decisions must be left in the hands of the medical profession and public health officials or we will endanger the lives of Californians. The California Medical Association, Nurses Association and Hospital and Health Systems Association, as well as public health officials recognize the danger of allowing political extremists to dictate state public health and medical policy.

This type of repressive and discriminatory action forced upon Californians by the proponents will not serve to limit the AIDS problem, but rather could prolong the spread of this terrible disease. The fear of quarantine or other discriminatory measures, including loss of jobs, will make people reluctant to be tested. Fearing social isolation, individuals at risk will avoid early medical intervention and testing, driving AIDS underground.

Enforcement of this measure could cost the taxpayers billions of dollars to quarantine and isolate AIDS carriers and could require public health officials to do so. Proposition 69 could also require blood tests of every school-child and teacher. Mandatory testing and quarantine would serve no medical purpose because there are no documented cases of AIDS ever being transmitted by casual contact.

Californians from all walks of life know they must unite to end this dreadful epidemic. Californians can be proud that doctors and public health officials have acted in a professional, rational and responsible manner to protect the health of Californians and have taken all appropriate precautions as they are needed. This kind of initiative can only divide, create panic and force thousands not to get tested or treated because of fear.

Join us in once again rejecting the extremes of the proponents. Vote NO on Proposition 69.

LAURENS WHITE, M.D.

President, California Medical Association

MARILYN RODGERS

President, California Nurses Association

C. DUANE DAUNER

President, California Association of Hospitals and Health Systems

Rebuttal to Argument Against Proposition 69

The argument against Proposition 69 is actually an argument against use of traditional public health measures to stop *any* disease. AIDS is a disease of persons infected with the AIDS virus. Infected persons infect uninfected persons, and the infection is spreading. Medical literature has documented cases of nonsexual, non-needle-transmitted infection. At least three health care workers, and a mother caring for an infected child, may pay with their lives for discovering that needles or sexual intercourse are not necessary to transmit AIDS.

Research indicates that other infections in AIDS virus carriers, like tuberculosis or herpes, can activate the AIDS virus and lead to full-blown AIDS. Identification of infected persons makes treatment of such "coinfections" possible and may forestall progression to full AIDS.

There is no vaccine, and no cure, for this deadly disease, but research has provided better tests. The opponents of Proposition 69 oppose widespread testing to identify and treat those at risk of developing AIDS and

infecting others. Their "policy" makes it virtually impossible to treat and educate those most "at risk." The opponents' "policy" is to allow the uninfected to become infected, the infected to become sick, and the sick to die, preferably cheaply.

Proposition 69 enables health authorities to use traditional public health measures to stop AIDS. The cost is small compared to the cost of the growing number of AIDS cases resulting from the present nonpolicy.

Restore a traditional public health policy in California. Vote YES on Proposition 69.

KHUSHRO GHANDHI

California Director, National Democratic Policy Committee (NDPC), and Member, Los Angeles County Democratic Party Central Committee

JOHN GRAUERHOLZ, M.D., F.C.A.P.

(Fellow, College of American Pathologists)

LYNDON H. LAROUCHE, JR.

Candidate for the 1988 Democratic Party Presidential Nomination